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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,721	05/25/2007	Roy B. Nelson	3712036.00741	9915
29157	7590	03/03/2010		
K&L Gates LLP				
P.O. Box 1135				
CHICAGO, IL 60690				
EXAMINER				
JACYNA, J CASIMER				
ART UNIT		PAPER NUMBER		
3754				
NOTIFICATION DATE		DELIVERY MODE		
03/03/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### Office Action Summary

**Application No.**

10/596,721

**Applicant(s)**

NELSON ET AL.

**Examiner**

J. Casimer Jacyna

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/22)  
Paper No(s)/Mail Date 12202006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. Applicant's election without traverse of group I in the reply filed on 11/17/2009 is acknowledged.
2. Claim 18 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/17/2009.
3. The disclosure is objected to because of the following informalities: The specification lacks the headings noted in MPEP 608.01(a).

Appropriate correction is required.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 10-15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt 2,013,016 in view of Hammerle EP0221369. As noted in the PCT/ISA/237 written opinion mailed 3/15/2005 Vogt discloses a depositing device including a pressurized feed line 146 containing a food such as ice cream with a gas injected at 68 as disclosed on page 3, left column, line 71, to the right column, line 3, with the food product delivered to molds 179 substantially as claimed but does not disclose a piston and chamber outlet with a pressure retaining means. However, Hammerle discloses another depositing device including a feed line 3 pressurized by the gravity head of the material in supply 2, a piston 4, a chamber 8, an outlet 9 at atmospheric pressure and pressure retaining means 18 which will open on a pressure

increase from the piston lowering for the purpose of better control of the material dosing and a to provide an easily cleaned outlet. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Vogt with a piston and chamber outlet having pressure retaining means as, for example, taught by Hammerle in order to better control of the material dosing and a to provide an easily cleaned outlet. In regard to claims 2 and 3, Hammerle teaches a spring 17 which biases the valve 18 closed. In regard to claims 4 and 5, one of ordinary skill in the art would have considered it obvious to adjust the tensions or bias of the spring to open at any particular pressure a user or designer found desirable. In regard to claims 6 and 7, Vogt discloses rotary valve 178. In regard to claim 8, Vogt discloses splitting the outlet stream into two flows 177. In regard to claim 10, Vogt discloses a product pump means A and a gas pump means B. In regard to claims 14 and 15, one of ordinary skill in the art would have considered it obvious to adjust the speed ratio of the pumps to any particular ratio a user or designer found desirable.

6. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt 2,013,016 in view of Hammerle EP0221369 as applied to claim 10 above and further in view of Aymard et al. WO 0213618. Vogt discloses a depositing device including the use of two pumps A and B for product and gas and a pressure retaining valve 172, 174 substantially as claimed but does not disclose a specific control of the pump ratios nor the removal of excess product. However, Aymard discloses another depositing device including a product pump (see the embodiment of figure 3) HPP1 and a gas pump HPP2 with ratios to suction in a desired amount of gas from 10 and an

excess product return line 50 at the pressure retaining valve VAN DEP for the purpose of attaining better control of the gas injection and product line pressure. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Vogt with a set of specific pump speed ratios and an excess product return line as, for example, taught by Aymard in order to attain better control of the gas injection and product line pressure.

7. Claims 1, 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. 5,207,352 in view of Lemelson 3,422,648. Porter discloses a depositing device including a pressurized feed line<sup>15</sup> containing a viscous polymer with a gas injected at 306 and 304, a piston 72, a chamber 56, 62, 96, an outlet 98 capable of delivering the product to molds as claimed wherein the product will be at atmospheric pressure as claimed when deposited from 101 (As opposed to being dispensed into a closed conduit for supplying another machine. Note the claims define the product to be at atmospheric pressure when delivered to the mold which is located underneath the nozzle and is surrounded by atmospheric pressure.), and pressure retaining means 108 wherein control 92 operates 108 to open when there is a surge in line pressure caused by 92 coordinating the descent of piston 72 which fully opens valve 66 to increase line pressure substantially as claimed but does not disclose the device to dispense a viscous food. However, Lemelson teaches another depositing device that deposits lengths of polymeric material and further teaches the devices which handle and dispense or deposit polymeric material may also be adapted to dispense or deposit food products as disclosed on column 7, lines 35-41. Therefore, it would have been obvious

to one of ordinary skill in the art at the time the invention was made to adapt the dispenser of Porter to dispense or deposit a food product as, for example, taught by Lemelson in order to increase the usefulness and versatility of the Porter device by using the Porter device to deposit additional materials. In regard to claim 9, Porter discloses a servo control 92.

8. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. 5,207,352 in view of Lemelson 3,422,648 as applied to claim 1 above and further in view of Tomikawa et al. 2005/0215660. Porter discloses a depositing device including a pressure retaining means 108 wherein control 92 operates 108 to open when there is a surge in line pressure substantially as claimed but does not disclose the pressure retaining means to be a pressure actuated valve. However, Tomikawa teaches another outlet valve pressure retaining means 26 that opens upon descent of a piston 23 that is pressure actuated by a spring bias (see claim 3) 27 for the purpose of automatically controlling the outlet valve without a complex control system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Porter with a spring biased outlet valve pressure retaining means as, for example, taught by Tomikawa in order to increase the usefulness and versatility of the Porter device by using the Porter device to automatically control the outlet valve without a complex control system. In regard to claims 4 and 5, one of ordinary skill in the art would have considered it obvious to adjust the tension or bias of the spring to open at any particular pressure a user or designer found desirable. In regard to claim 6, Porter discloses valve 66.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754